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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS

AND INTERFERENCES

Ex parte ANETTE BUSCHKA,
PETER BLOMSTROM,
and TOMAS BILIGREN

Appeal 2008-1467
Application 09/870,517
Technology Center 1700

Oral Hearing Held: April 17, 2008

Before EDWARD C. KIMLIN, BRADLEY R. GARRIS, and
KAREN M. HASTINGS, Administrative Patent Judges

ON BEHALF OF THE APPELLANTS:

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The above-entitled matter came on for hearing on Thursday, April 17, 2008, commencing at 10:43 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Dawn A. Brown, Notary Registration No. 7066896, Notary Public.

THE CLERK: Calendar Number 47, Mr. Boone.

JUDGE KIMLIN: Good morning, Mr. Boone.

MR. BOONE: Good morning. How are you?

JUDGE KIMLIN: Fine, thank you.

MR. BOONE: Just as some general background, the major subject matter of the invention is that cellulose mat is used in absorbent products. An absorbent mat and, in general, it was recognized in the art that cellulose mat was too weak to operate by itself. So there was a need for a reinforcing mat typically of long fibers.

And the primary reference being applied by the examiner is Matsamura. Basically recognizes that prior to Matsamura this need for cellulose and this long-fiber reinforcing mat was needed. Matsamura teaches -- well, what was done was to laminate them together. When you laminate them together, it requires a lot of adhesive, and you get a very thick, unwieldy product.

Matsamura looks at that and says the solution is to take a product where the long fibers are formed and then aired off, blown down onto a wire to form a sort of random pattern of long fibers and then blow the short cellulose fibers on top of that.

The reference talks about a number of reasons in terms of speed, efficiency, cost for their solution. But as they do it, they mention that while it overcomes to them was the prior art of this large adhesive layer, you'll still require some adhesive to do it. So that is what the examiner then

is applying, this Matsamura reference.

The examiner comments that one skilled in the art would take and substitute for what Matsamura teaches an air-doffing apparatus card, which is essentially the Fehrer card in the Fehrer reference. The examiner says why would you do that? It is obvious. It would simplify the process of Matsamura and relies, in essence, out of context on the fact that Matsamura says using a carded lap.

However, it is very clear in Matsamura that it is relying on this lickerin and the fact that the lickerin provides this random lap. There is no sort of simplification of the process by using the Fehrer card. It is not a simplification; it is a complete change of the process. It presents an entirely different product. It is formed in an entirely different manner.

And with that, with what the claimed invention is, having not fully briefed, you know, this with KSR in mind, there is the unpredictable result that no binder is necessary.

With the air-doffing apparatus claimed in the present invention, that there is, in effect, this very porous gauze layer that can accept the cellulose without any binder. And that is -- you know, it was unpredictable that you could do this.

You could get this product -- that, you know, you completely overcome any of the inherent problems with using binders -- the cost, the effect on the product.

And with that, there is, you know, it is sort of -- the combination is unpredictable and then the fact the change being suggested to Matsamura is not a simplification. It is not taking the Matsamura process and refining it. It is a complete change to it going against what Matsamura is teaching of kneading and requiring a randomly laid web, which is what is

provided by a lickerin.

JUDGE HASTINGS: Fehrer talks about when he cards it, he does get a uniform deposition of the fibers on the surface. I know in your brief you say that carding is always going to be an aligned fiber versus lickerin should always be random.

So the uniform distribution here -- the uniform deposition in Fehrer, he never talks about an aligned fiber in Fehrer. He says it is uniform. It is your belief it is inherent it is an aligned fiber?

MR. BOONE: Yes. That is an issue of the carding anyway. It has, essentially, tongs on there separating the fibers and by the nature of the drum spinning, it is inherently pulling the fibers in one direction to align them. That is something Matsamura recognizes as well with a few comments and the background of Matsamura.

JUDGE HASTINGS: From the reference evidence, do you believe that it is known in the art to use either type of apparatus to form a non-woven web?

MR. BOONE: Of one type it would be known. This combination of with the cellulose, no.

JUDGE HASTINGS: The examiner – regarding your point about the sufficient bonding, the examiner does apply a third reference in this combination, and her position is that it would have been prima facie obvious to replace the adhesive bonding that is necessary in the primary reference with some mechanical interlocking.

MR. BOONE: Yes, the examiner does. That is sort of overlooking that if one did that with the Matsamura process, Matsamura would still be doing this without an air-doffing apparatus card.

And it is, in essence, a product-by-process claim requiring this

apparatus to do this, but that is what it gives you is a very specific type of mat and that is something that with Matsamura -- essentially, they're poking in through the things to get interlocking. It is how they're operating.

Matsamura, you're not going to do that. You use binder. It is very clear. Even if you somehow were to do, it is still a different process. You still have to use this Fehrer card or a card of the Fehrer nature, and that is something I think is very clear that Matsamura -- it is a change in the principle of operation. Matsamura teaches away from anything of that nature.

Are there further questions? It is one of these where I think this is a straightforward issue where it falls. I think, in my opinion, a poorly crafted rejection where Matsamura just -- this is not a change that one skilled in the art would make.

I think there are very clear laws to support. This is a change-in-principles operation and the claimed invention has an unpredictable result.

JUDGE KIMLIN: And you are claiming a product claim here?

MR. BOONE: Yes, it is a product claim.

JUDGE KIMLIN: And the basic distinction between this product and the product that would be produced by the primary reference is what again?

MR. BOONE: In the primary reference, Matsamura, they'll take the embodiments primarily being asserted. They'll first take a lap of these long fibers, and they'll take that, put it through a lickerin, and that gives you this random gauze layer, and then on top of that they blow on cellulose.

What the claimed invention is, instead of this lap lickerin process, they'll use a Fehrer card to get this porous-penetrable gauze layer

and on top of that they blow the cellulose.

JUDGE KIMLIN: And your argument that it wouldn't be obvious to replace the random orientation with the known alignment type is why?

MR. BOONE: Based on the art, it is a change in the principle of operation. The art teaches that you need the lickerin to get, you know, proper quality.

JUDGE KIMLIN: Does the primary reference, is it fair to say that it teaches it is necessary or that is just a way to do it?

MR. BOONE: No, I think their -- obviously, I'm advocating, but I think it is pretty clear they teach that the lickerin and random alignment is something that they need to do. And it is one of these where --

JUDGE KIMLIN: Is there an advantage that you're losing by not having the random orientation the way the reference would have it?

MR. BOONE: I suppose as Matsamura points out, there may be, you know, the fibers are now going to be in the machine direction instead of in a cross-direction, so there may be a little less sturdiness in that direction, but the fibers are going to be so integrated you gain a little bit of that strength back.

JUDGE KIMLIN: The question would be, would one of ordinary skill in the art realize that you have advantages and disadvantages of using either of the two known ways of orienting the fibers.

MR. BOONE: Yes, but I guess it is one of those where one skilled in the art -- nobody was doing it. It wasn't thought that you could do this and get a good product.

You know, it is sort of to the benefit of being able to go away from any binder, which is -- that is a claim recitation, and that is something

that wasn't known. There wasn't a way to be able to get to something without any bonding agent through this, sort of, simple process. That was something that wasn't known.

So any time you looked at the art, you just kind of discounted any suggestion of this. It wasn't teaching or suggesting that. It wasn't obvious. It was, all right, you do this and get this unpredictable result.

JUDGE KIMLIN: All right. Any further questions?

Thank you very much, Mr. Boone.

MR. BOONE: All right.

JUDGE KIMLIN: We will deliberate on that issue.

MR. BOONE: Have a good day.

Whereupon, the proceedings at 10:55 a.m. were concluded.